

Below is the Order of the Court.



Karen A. Overstreet
Karen A. Overstreet
U.S. Bankruptcy Judge
(Dated as of Entered on Docket date above)

Karen A. Overstreet
Bankruptcy Judge
United States Courthouse
700 Stewart Street, Suite 6301
Seattle, WA 98101
206-370-5330

IN THE UNITED STATES BANKRUPTCY COURT FOR THE
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

In re

CONSOLIDATED MERIDIAN FUNDS,
a/k/a MERIDIAN INVESTORS TRUST, et al.

Debtors.

MARK CALVERT, as liquidating Trustee of
MERIDIAN INVESTORS TRUST, et al.

Plaintiffs,

v.

JACK W. BROWN, et al.

Defendants.

Case No. 10-17952

Adv. No. 12-01476

Adv. No. 12-01583

ORDER DENYING DEFENDANTS'
MOTION FOR SUMMARY JUDGMENT
ON WASHINGTON UFTA CLAIMS
AND DENYING IN PART
BANKRUPTCY CODE §502 CLAIMS

MARGARET A. HEFTEL, et al.

Defendants.

1 This matter came before the Court on February 8, 2013, on the concurrent motions for
2 summary judgment (the “Motions”) filed by Jack W. Brown and Margaret A. Heftel
3 (collectively, “Defendants”). The Defendants were represented at the hearing by their counsel,
4 Robert S. Banks, Jr., of Banks Law Office PC, and Michael Warren, of Pivotal Law Group
5 PLLC, and the plaintiff, Mark Calvert (the “Trustee”), was represented by Heidi Craig Garcia of
6 K&L Gates LLP. The Court heard oral argument at the hearing and has considered the records
7 and pleadings filed in both cases (Adv. No. 12-01476 and Adv. No. 12-01583).

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10 **I. BACKGROUND**

11 The Trustee contends that these adversary proceedings arise from a massive Ponzi
12 scheme perpetrated by Frederick Darren Berg (“Berg”). Berg is a debtor in his own individual
13 bankruptcy proceeding, along with six other related entities. The Court is presiding over 12
14 bankruptcy cases involving debtors that are/were investment funds (the “Meridian Funds”) and
15 one affiliated entity formerly owned, managed or controlled by Berg. Those debtors have been
16 substantively consolidated into one proceeding referred to hereinafter as the “Meridian
17 Bankruptcy.” On June 22, 2011, the Court entered an order confirming a consensual Chapter 11
18 plan in the Meridian Bankruptcy (the “Plan”). The Plan provides for the creation of the
19 Liquidating Trust for the Substantively Consolidated Meridian Funds, a/k/a/ The Meridian
20 Investors Trust. Mark Calvert, the named plaintiff in these adversary proceedings, is acting as
21 the Liquidating Trustee of the Meridian Investors Trust, which holds all of the claims of the
22 consolidated bankruptcy estates.

23 The Trustee filed 54 adversary proceedings against investors seeking the return of what
24 the Trustee contends are fraudulent conveyances. The actions against the Defendants are two of
25 those actions. In these actions, the Trustee seeks to recover transfers avoidable under Chapter V

1 of the Bankruptcy Code¹ as well as under Washington's Uniform Fraudulent Transfer Act, RCW
2 19.40.010 *et seq.* ("UFTA"). The Trustee seeks to recover transfers to Mr. Brown totaling
3 \$105,291.23 as "fictitious interest." Because the transfers were made outside the two-year
4 statute of limitations for fraudulent transfers under Section 548, the Trustee seeks recovery of the
5 funds only under the UFTA. In the case of Ms. Heftel, the Trustee seeks to recover \$531,448.44
6 as "fictitious interest" under both state and federal fraudulent conveyance statutes.
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9 II. FACTS

10 The facts pertinent to the Motions are not disputed.
11

12 A. Brown.

13 Defendant Jack Brown is an individual who made three loans to the Meridian Funds in
14 exchange for promissory notes. Pursuant to the first note, Mr. Brown loaned \$250,000 to
15 Meridian Mortgage Investors Fund VIII, LLC on February 23, 2005. Declaration of Jack Brown
16 ("Brown Decl."), Dkt. #58, Ex. A. The February 2005 Note provided for interest at the rate of
17 12.5% per annum and had a maturity date of February 28, 2006. According to the Brown Decl.,
18 this loan was renewed pursuant to a second note dated March 1, 2006, in the principal amount of
19 \$250,000. Brown Decl., ¶ 8, Ex. B. The March 2006 Note provided for interest at the rate of
20 12.5% per annum and had a maturity date of February 28, 2007. Pursuant to a third note, Mr.
21 Brown loaned \$250,000 to Meridian Mortgage Investors Fund VII, LLC on March 1, 2006.
22 Brown Decl., Ex. C. The March 2006 Note provided for interest at the rate of 9.5% per annum
23 and had a maturity date of February 28, 2007.
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25 By separate letters, each dated January 15, 2007, Berg notified Mr. Brown that his two
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28 ¹ Unless otherwise indicated, all Code, Chapter, Section and Rule references are to the Bankruptcy Code, 11
U.S.C. §§101 *et seq.* and to the Federal Rules of Bankruptcy Procedure, Rules 1001 *et seq.*

1 outstanding loans would mature in February of 2007, and he asked whether Mr. Brown wanted
2 to renew the notes or be repaid the full amount owed. Brown Decl., Exs. D, E. By letter dated
3 January 17, 2007, Mr. Brown requested repayment of both \$250,000 notes. Brown Decl., Ex. F.
4 On March 20, 2007, Mr. Brown was paid \$605,291.23 in full satisfaction of both notes. The
5 Trustee seeks to recover \$105,291.23, the excess paid to Mr. Brown over the principal amount of
6 his \$500,000 in loans.

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9 **B. Heftel.**

10 Defendant Margaret Heftel is one of a number of defendants in the action filed against
11 her. Her ex-husband, Patrick Siemion, is also a defendant in that action and is representing
12 himself *pro se*. The Motions concern only Ms. Heftel's liability for "fictitious interest." Ms.
13 Heftel was married to her former husband when they made loans to the Meridian Funds in
14 exchange for promissory notes. Mr. Siemion and Ms. Heftel made numerous loans to various
15 Meridian Funds starting in 2001 and continuing to 2010, totaling \$2,093,263.36, and they
16 received \$2,624,711.80 in payments from the Meridian Funds; the last payment was received on
17 June 16, 2010. Ms. Heftel does not dispute the amounts loaned or the payments received for
18 purposes of the Motions. Declaration of Margaret Heftel, Dkt. #61. Ms. Heftel and Mr. Siemion
19 were divorced on October 25, 2006. The Trustee seeks to recover \$531,448.44 in "fictitious
20 interest" consisting of payments to Mr. Siemion and Ms. Heftel in excess of the amount they
21 loaned.

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26 **C. Berg Criminal Plea.**

27 The lead case in the consolidated Meridian Bankruptcy was filed on July 9, 2010. On
28 October 14, 2010, federal authorities charged Berg with money laundering and wire fraud.²

² *United States v. Berg*, No. 2:10-cr-00310-RAJ (W.D. Wash. Oct. 14, 2010), Dkt. #4.

1 Berg, in a plea agreement entered on August 2, 2011, admitted that he had knowingly and
2 willfully devised and executed a scheme and artifice for the purpose of defrauding investors. As
3 part of the scheme, Berg “raised over \$280 million from approximately 500 investors in his
4 investment funds,” while diverting “approximately \$100 million that he used for his personal
5 benefit and to promote the scheme to defraud.”³ On February 9, 2012, Berg was sentenced to 18
6 years of imprisonment, three years of supervised release, and restitution.⁴
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9 Since the filing of the Complaint, discovery has been stayed and the parties have engaged
10 only in an exchange of initial documents pursuant to the Court’s Scheduling Order (Dkt. #48 in
11 Brown; Dkt. #52 in Heftel) and the Pre-Trial Order (Dkt. #52 in Brown; Dkt. #58 in Heftel, *See*
12 ¶7 related to the stay of discovery). Pending in each case are also the Defendants’ Motions to
13 Withdraw the Reference which have been transmitted to the District Court. Because the District
14 Court has not ruled on the Motions to Withdraw the Reference, this Court may continue to hear
15 and determine pretrial motions in this matter. Local Rule W.D. Wash. Bankr. 5011-1, 9015-1;
16 Local Rule W.D. Wash. 87.
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20 **III. ISSUES**

21 The Defendants concede that the Court recently entered an order denying summary
22 judgment in another Meridian case, *Calvert v. Foster Radford, et al.*, 12-01505, Motion for
23 Summary Judgment by Sun Granite Investments LLC, Dkt. #84 (January 19, 2013) (the “Sun
24 Granite Order”), where an identical issue was raised. Although the Motions were filed before
25 the Sun Granite Order was entered, the hearing on the Motions did not occur until after the entry
26 of that order. In the Sun Granite Order, the Court addressed two issues: (1) whether a borrower’s
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³ The Trustee contends that Berg misstated both the number of investors in the Meridian Funds and the dollar amount of his fraud. *See Calvert v. Foster Radford*, 12-01505, Plaintiff’s Response to Motion, Dkt. #74, fn. 28.

⁴ *United States v. Berg*, No. 2:10-cr-00310-RAJ (W.D. Wash. Feb. 9, 2012), Dkt. #95.

1 payment of principal and a reasonable rate of interest due on an enforceable promissory note
2 constitutes satisfaction of an antecedent debt within the meaning of Bankruptcy Code
3 §548(d)(2)(A) and RCW 19.40.031(a); and (2) whether the movant, Sun Granite Investments,
4 LLC, accepted the repayments at issue for value and in good faith within the meaning of Section
5 548(c) and RCW 19.40.081(a). On these issues, the Court held that (i) under existing Ninth
6 Circuit authorities, payments from the Meridian Funds constituting lawful interest did not
7 constitute satisfaction of an antecedent debt within the meaning of either the state or federal
8 fraudulent conveyance statutes, and therefore did not constitute reasonably equivalent value, and
9 (ii) because of the stay of discovery, it was premature to rule on whether Sun Granite
10 Investments, LLC was a good faith recipient of the transfers at issue.

14 Defendants Brown and Heftel have recast the issue raised in their Motions in this way:
15 whether there is an unwritten exception in the unambiguous Washington statute that provides
16 that a transfer is fraudulent where the transferor receives property without receiving “reasonably
17 equivalent value,” which is specifically defined to mean the satisfaction of an antecedent debt.
18 RCW 19.40.041, RCW 19.40.031. The Defendants contend that in the Sun Granite Order, the
19 Court failed to consider their argument that an equity investor should be treated differently than a
20 lender in the UFTA analysis. They argue that a debtor’s repayment of an equity investment
21 would not qualify as satisfaction of an antecedent debt under the state UFTA, whereas the
22 debtor’s repayment of a loan with reasonable interest should qualify as satisfaction of an
23 antecedent debt. For the following reasons, the Court will deny the Motions for the same reasons
24 articulated in the Sun Granite Order, which is incorporated herein in its entirety by this reference.

Defendants also seek dismissal of the Trustee’s claim under Section 502 of the
Bankruptcy Code. As discussed below, the Court will grant that relief as to Mr. Brown, but deny

1 that relief as to Ms. Heftel.

2 **IV. LAW**

3 **A. Summary Judgment Standard.**

4 To prevail on a motion for summary judgment, the moving party must show by reference
5 to pleadings, discovery, admissions, and affidavits, if any, that "there is no genuine issue as to
6 any material fact and that the moving party is entitled to a judgment as a matter of law." Rule
7 56(a)(c), Fed.R.Civ.P.; Rule 7056, Fed.R.Bank.P. If the moving party meets its burden, the
8 burden of production then shifts to the nonmoving party, who must produce by admissible
9 evidence "specific facts showing that there is a genuine issue for trial." Rule 7056(e). The
10 moving party is entitled to a judgment as a matter of law if the nonmoving party has failed to
11 make a sufficient showing on an essential element of its case with respect to which it has the
12 burden of proof. *Celotex Corp. v. Catrett*, 477 U.S. 317, 91 L.Ed. 2d 265, 106 S.Ct. 2548
13 (1986). *See also In re Irizarry*, 171 B.R. 874 (9th Cir. BAP 1994).

14 **B. The Statutory Framework.**

15 The Court examined the statutory framework under state and federal fraudulent
16 conveyance laws in detail in the Sun Granite Order and will not repeat that here, except to
17 emphasize the one important distinction between the state statute and its federal counterpart: an
18 intentionally fraudulent transfer under state law may not be avoided as against a transferee who
19 received the transfer in good faith and for a reasonably equivalent value, RCW 19.40.081(a),
20 whereas an intentionally fraudulent transfer under Section 548(a)(1)(A) may be avoided even if
21 the transfer was supported by reasonably equivalent value and received by the transferee in good
22 faith. In the latter case, the transferee may still rely on its defense under Section 548(c). Under
23 both statutes, a transferee can prevent the avoidance of a constructively fraudulent transfer by

1 proving that he or she received the transfer in exchange for reasonably equivalent value. 11
2 U.S.C. §548(a)(1)(B); RCW 19.040.041(a)(2).
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4 The Defendants seek summary judgment only under the state statutes, RCW 19.40.041
5 (intentional and constructive fraud; present and future creditors), RCW 19.40.051 (constructive
6 fraud; present creditors), and RCW 19.40.081 (defenses). Under these statutes, the Trustee has
7 the burden of proving the lack of reasonably equivalent value supporting the transfers he
8 challenges.
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10 **C. Reasonably Equivalent Value.**
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12 Like the defendant in *Calvert v. Radford*, the Defendants urge the Court to adopt the
13 reasoning of those courts which have held that payment of commercially reasonable interest on
14 an enforceable promissory note should be treated as payment on an antecedent debt and therefore
15 not be recoverable as a fraudulent conveyance.⁵ There are only two courts that have reached this
16 specific holding: *In re Unified Commercial Capital, Inc.*, 260 B.R. 343 (Bankr. W.D. N.Y.
17 2001) and *In re Carrozzella & Richardson*, 286 B.R. 480 (D. Conn. 2002). The Court discussed
18 these cases in depth in the Sun Granite Order, rejecting their analysis in light of the bright line
19 approach taken by the Ninth Circuit in *In re United Energy Corp.*, 944 F.2d 589, 596 (9th Cir.
20 1991) and *Donell v. Kowell*, 533 F.3d 762 (9th Cir. 2008). Defendants posit that the Ninth
21 Circuit's decision in *Donell* would have been different had the interest rate on the notes at issue
22 there (20% every 90 days) been lower, like the annual rates of interest on the notes at issue in
23 these cases (6.75%-14%). They correctly note that in the opening line of the *Donell* opinion, the
24 court states "Robert Kowell [the transferee defendant] found an investment opportunity too good
25 to be true." 533 F.3d 762, 766.

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1 The Defendants' argument has some simplistic appeal. The state statute does not require
2 "equal" or "equivalent" value in exchange for a transfer from the debtor, but rather, "reasonably
3 equivalent value." By unambiguous statutory language, the definition of "value" under state law
4 includes "payment on antecedent debt." RCW 19.40.031(a). Interest payments, the Defendants
5 argue, are the quintessential form of payment on an antecedent debt and a return of interest at a
6 rate of 6.75% per annum should certainly be deemed closer to being "reasonably equivalent"
7 than a return of 20% over 90 days, as was the case in *Donell*.

8 The problem with the Defendants' argument, however, is that the Ninth Circuit in *Donell*
9 and *United Energy* followed the rationale of the courts adopting a bright line approach, that *any*
10 return to a lender or investor in a Ponzi scheme in excess of the principal investment will not be
11 treated as value, and therefore cannot be counted in determining whether the return was
12 "reasonably equivalent." The *Donell* court specifically adopted a "netting rule" used to
13 determine the liability of the transferee in the first instance – that is, whether the transferee
14 received more from the debtor than the amount of the transferee's principal investment.
15
16 Construing a California fraudulent conveyance statute similar to the UFTA, the *Donell* court
17 concluded that "[i]f the net is positive, the receiver has established liability...." *Donell*, 533 F.3d
18 at 772. Although the *Donell* court noted that the defendant's rate of return there was "too good
19 to be true," nowhere in the opinion does the court make that the basis of its holding. Instead, the
20 court's conclusion focused on the fact that the "return" was not from earnings or investments
21 made by the debtor, but instead from cash fraudulently obtained from other unsuspecting
22 investors in the debtor's unlawful Ponzi scheme. In those circumstances, the court characterized
23 the right of the investor to repayment as being a right to restitution for amounts advanced to the
24 debtor rather than a right under an enforceable note.

1 There is no question that the courts have struggled with the differing facts in these cases,
2 where the consequences of the scheme deprive some investors of their life savings and render
3 other investors defendants in lawsuits where significant sums of money, long since paid to them,
4 are subject to recapture. Acknowledging these harsh results, the Ninth Circuit adopted a rule
5 intended to even out the results as between investors who get paid and those who do not.
6
7 Investors who get paid are protected by the various statutes of limitation; they may keep those
8 payments made to them outside the statute of limitations, but they must share the pain by giving
9 up anything they received in excess of their investment within the applicable statute of
10 limitations. The case law reflects that the courts are not in agreement as to how the pain should
11 be shared in these unfortunate cases.

12 Cases cited by the Defendants illustrate the dispute in the courts. *Securities Investor*
13 *Prot. Corp. v. Bernard L. Madoff Inv. Sec. LLC*, 476 B.R. 715 (S.D.N.Y. 2012), supplemented
14 (May 15, 2012), addressed investments made in connection with the massive Ponzi scheme
15 perpetrated by Bernard Madoff. Although the Defendants correctly point out that the interests
16 the investors had in the Madoff case were securities, and not the kind of promissory notes at
17 issue in this case, the court still noted the general rules articulated by *Donell* when the return paid
18 to investors is not from an actual investment, but instead comes from the investments made by
19 other investors. Citing *Donell*, the court held:

20
21 Notwithstanding these arguments, however, the Court concludes that
22 those transfers from Madoff Securities to defendants that exceeded the
23 return of defendants' principal, *i.e.*, that constituted profits, were not
24 "for value." Unlike the situation under § 546(e), Congress has here
25 created no "safe harbor" to shelter receipts that might otherwise be
26 subject to avoidance. Accordingly, in this context, the transfers must
27 be assessed on the basis of what they really were; and they really were
28 artificial transfers designed to further the fraud, rather than any true
return on investments.

1 It is not surprising, therefore, that every circuit court to address this
2 issue has concluded that an investor's profits from a Ponzi scheme,
3 whether paper profits or actual transfers, are not "for value." *See*
4 *Donell v. Kowell*, 533 F.3d 762, 771-72 (9th Cir.2008) ("Amounts
5 transferred by the Ponzi scheme perpetrator to the investor are netted
against the initial amounts invested by that individual. If the net is
positive, the receiver has established liability....").

6 476 B.R. 715, 725. Although the court did distinguish *Carrozzella* on the ground that it involved
7 investors who received a return of principal and a "reasonable" rate of interest, there is nothing
8 in the opinion to suggest that the court, if presented with facts like those in *Carrozzella*, would
9 actually adopt its holding.

10 Defendants argue that they are not investors in the equity sense – they are traditional
11 lenders seeking return only of reasonable interest in exchange for the time value of their loans.
12 The notes attached to the Brown Declaration and the Heftel Declaration, however, look more like
13 investments than traditional loans. The notes refer to disclosure packages and subscription
14 agreements, which are normally associated with investments rather than commercial loans. The
15 complaints in these cases allege that the sole business of the Meridian Funds was to offer and sell
16 promissory notes to investors and that investors were told that the sole purpose of the investment
17 was to enable the Meridian Funds to invest on their behalf in seller-financed real estate contracts,
18 hard money loans, real estate and mortgage-back securities. Complaint, Dkt. # 1, ¶16 (12-01476,
19 12-01583). Investors like Mr. Brown and Ms. Heftel were promised rates of return on their
20 investments in the form of interest payments. The Ninth Circuit, however, has not adopted a rule
21 which treats victims of a Ponzi scheme differently depending upon whether their investment can
22 be characterized as a financial investment, equity investment or loan.

23 In another case cited by the Defendants, *In re Image Masters, Inc.*, 421 B.R. 164 (Bankr.
24 E.D. Pa. 2009), the trustee asserted both intentional and constructive fraud claims against lending

1 institutions which had received payments on homeowner loans as part of a complex Ponzi
2 scheme. The court dismissed the trustee's claims against the lenders because it found that the
3 transfers were in exchange for equivalent value. *Id.* at 183. The facts in that case, however, are
4 very different from the facts in these cases. None of the consolidated debtors in *Image Masters*
5 had any direct relationship with the defendant lenders. Instead, homeowners refinanced their
6 homes directly with the lenders, who took mortgages against the homes. The homeowners then
7 separately contracted with the debtors to extract the "equity" from their homes by issuing to the
8 debtors a "wraparound" mortgage on their homes. Pursuant to the agreements with the debtors,
9 the debtors were to pay the homeowners' refinancing lenders. There was no allegation in the
10 complaints that the conventional lenders had any knowledge of the wraparound mortgages or the
11 agreements between the homeowners and the debtors. As part of the scheme, the debtors made
12 payments in excess of \$23 million to the defendant lenders. The court concluded that because
13 the debtors' payments to the lenders reduced the debtors' debt to the homeowners, the debtors
14 received "value" for those payments, and that because the reduction in the debt was dollar-for-
15 dollar, it was also equivalent. *Id.* at 179. The court dismissed all of the fraud claims because it
16 found that the lenders received the payments in good faith and for reasonably equivalent value.
17

18 The case of *In re Fin. Federated Title & Trust, Inc.*, 309 F.3d 1325 (11th Cir. 2002), cited
19 by the Defendants, deals with services. The trustee in that case sued a former employee of the
20 debtor to recover amounts paid to her as commissions during the debtor's operation of a Ponzi
21 scheme. "It is not disputed that her responsibilities included organizing the office by
22 computerizing functions, coordinating office networking, performing payroll, commission and
23 banking functions, managing employees and acting as human resource director...." *Id.* at 1327,
24 1328. The court followed *In re Universal Clearing House Co.*, 60 B.R. 985 (D. Utah 1986), in

1 concluding that the determination of “value” should focus on the value of the goods and services
2 provided rather than the impact the goods and services had on the bankrupt entity (*i.e.*, deepening
3 insolvency and furtherance of the Ponzi scheme). *Id.* at 1332. The case deals with the question
4 of how service providers to a debtor engaged in a Ponzi scheme should be treated – a question
5 the Ninth Circuit has yet to answer and a question that need not be answered in these cases.
6

7 Finally, Defendants cite *In re M&M Mktg., LLC*, 2013 WL 152526 (Bankr. D. Neb. Jan.
8 15, 2013), where the court cited *Donell* with approval, but noted that other courts, in the right
9 circumstances, might find the repayment of interest equivalent value, citing *Carrozzella*. The
10 facts in the case before the *M&M* court, however, did involve what the court thought was an
11 excessively high rate of interest, 25% in 90 days.
12

13 The foregoing cases illustrate quite clearly the unsettled state of the law on the difficult
14 issue presented in these cases. The Court is very sympathetic to the plight of the Defendants.
15 The Court has concluded, however, that the Ninth Circuit has declined to embrace the approach
16 taken in *Carrozzella*. The only difference between these cases and *Donell* is the rate of interest
17 to be paid to the investors on their investments in a Ponzi scheme. The Ninth Circuit has not
18 attached any significance to that distinction. For that reason, the Court concludes that the
19 payment of interest to the Defendants pursuant to the terms of their notes can be subject to the
20 Trustee’s fraudulent conveyance attack.
21

22 **D. Good Faith.**
23

24 Neither party briefed the legal issues related to good faith in connection with the
25 Motions. For the purpose of determining whether the Defendants are entitled to summary
26 judgment on the ground that they gave reasonably equivalent value to the Meridian Funds, good
27 faith is only relevant to the Trustee’s intentional fraud claims under RCW 19.40.041(a)(1) and
28

RCW 19.40.081(a).⁶ The Trustee does not appear to strenuously contest the good faith of Mr. Brown, but has submitted with the Declaration of Heidi Garcia documents he believes call into question the good faith of Ms. Heftel. In any case, consistent with the Sun Granite Order, given that discovery in these cases has been stayed, the Court does not believe it appropriate to address that clearly factual issue at this time.

E. Section 502.

The complaints include as a final cause of action a claim under Section 502 to disallow any claim the Defendants may make in the Meridian Bankruptcy. Mr. Brown argues that because he has not filed a proof of claim in the bankruptcy, this cause of action should be dismissed as to him. Ms. Heftel, on the other hand, has filed a proof of claim.

Section 502(d) prevents a transferee of a transfer that is avoidable under Sections 544 or 548 from receiving any distribution from the bankruptcy proceeding until and unless such entity has paid the amount of any liability to the estate it has for an avoidable transfer. If Ms. Heftel is found to have received a fraudulent transfer under Section 548, Section 502(d) would require disallowance of her right to any recovery on her filed proof of claim. Therefore, the Section 502 claim is perfectly appropriate as to her and need not be dismissed. Because Mr. Brown has not filed a proof of claim, however, Section 502 is, at this time, irrelevant. In the event that Mr. Brown files a proof of claim, the Trustee's right to object to that claim and assert Section 502(d) is preserved and can be raised at that time.⁷

⁶ Good faith is not relevant to the Trustee's claims that the transfers to the Defendants were constructively fraudulent as the statute does not require the transferee to take the transfers in good faith; the statute requires only that the transfer be supported by reasonably equivalent value. RCW 19.40.041(a)(2).

⁷ The *Donell* case includes a discussion concerning whether the defendant there could offset his liability to the receiver against an alleged claim against the debtor, with the court concluding that no offset was permissible. 533 F.3d, 762, 778-79. That discussion does not refer to Section 502, however, so this Court has not analyzed whether the discussion in *Donell* is applicable to the arguments in this case.

ORDER

NOW, THEREFORE, for the foregoing reasons, it is HEREBY ORDERED as follows:

1. The Trustee's cause of action against Defendant Brown under 11 U.S.C. §502 is dismissed.
2. Except as provided in Paragraph 1, the Motions are DENIED.

///END OF ORDER///